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**2001 OAL DETERMINATION NO. 12-L**

(Gov. Code sec. 11340.5; Cal.Code Regs., tit. 1, sec. 123(c))

December 19, 2001

Robert Hansen, Esq.
111 W. St. John Street, Suite 400
San Jose, CA 95113

Re: Request for Determination concerning the Contractors State License Board's rule prohibiting persons or business entities which it licenses from operating with multiple fictitious names; OAL File No. 00-012.

Dear Mr. Hansen:

You have requested the Office of Administrative Law ("OAL") to issue a determination as to whether the Contractors State License Board's alleged rule prohibiting persons or business entities which it licenses from operating with multiple fictitious names constitutes a "regulation" of the Contractors State License Board ("Board") that must be adopted pursuant to the Administrative Procedure Act ("APA").¹

In issuing a determination, OAL renders an opinion as to whether the challenged rule is a "regulation" as defined in Government Code section 11342.600, which should have been, but was not, adopted pursuant to the APA.²

1. Business and Professions Code section 7008 provides in part: "... Such rules and regulations [of the Contractors State License Board] shall be adopted in accordance with the provisions of the Administrative Procedure Act."

2. OAL is issuing this determination as a summary determination letter. Section 123 of title 1 of the California Code of Regulations provides in part:

"(b) OAL shall not accept for filing any request for determination if OAL finds that the state agency rule being challenged:

- (1) has been superseded;
- (2) has expired by its own terms;
- (3) has been declared in writing by the state agency under penalty of perjury, in accordance with Code of Civil Procedure Section 2015.5, to have been rescinded or to no longer be in effect;
- (4) has been nullified by a court in a judgment that has become final;
- (5) is contained in a regulation adopted pursuant to the APA;
- (6) *is contained in a California statute*;
- (7) is clearly within the scope of an express statutory exemption from the APA; or
- (8) is the same rule, or is substantially the same (i.e., has the same effect) as a rule from the same state agency, on which OAL has already issued a determination.

"(c) If, after accepting a request for determination, OAL finds that the challenged state agency rule falls within

The rule you are challenging on behalf of your client, Hancock Enterprises, Inc., is the Board's policy prohibiting licensees of the Board from operating with multiple fictitious business names. That challenged rule is documented in your determination request by a copy of a FAX you received from the Board stating that the use of several dba's by a business licensed by the Board is inappropriate.

Government Code section 11342.600 defines "regulation" to mean "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." For an agency rule to be a "standard of general application," it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind, or order.³

The challenged rule meets the definition of "regulation" in that the prohibition on use of multiple fictitious business names is applied generally to all members of an open class of all Board licensees. This rule also implements, interprets, or makes specific the Board's governing statutes such as Business and Professions Code sections 7008, 7059.1, and 7117.

However, as of January 1, 2002, Business and Professions Code section 7059.1, subdivision (b), codifies the challenged rule in statute as follows:

"(b) A licensee shall not conduct business under more than one name for each license.

Nothing in this section shall prevent a licensee from obtaining a business name change as otherwise provided by this chapter." [Emphasis added].

Business and Professions Code section 7059.1, subdivision (b), was adopted by SB 724 (Stats. 2001, c. 728, sec. 57) and filed with the Secretary of State on October 11, 2001. That statute will become effective on January 1, 2002.

subsection (b), OAL may at any time issue a summary determination letter instead of a determination pursuant to sections 124, 125, and 126. Any summary determination letter shall be issued pursuant to section 127. [Emphasis added.]"

This summary determination letter is being issued pursuant to section 123, subsection (c), because the challenged agency rule falls within section 123, subsection (b)(6).

3. *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; See *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323-324 (a standard of general application applies to all members of any open class).

Sincerely,

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